

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**COMPANY PETITION No. 50 of 2005
WITH
COMPANY PETITION No. 51 of 2005**

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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- 1 Whether Reporters of Local Papers may
be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the
fair copy of the judgment ?
 - Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?
 - 5 Whether it is to be circulated to the
civil judge ?

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**PAUSHAK LIMITED - Petitioner(s)
Versus
.. - Respondent(s)**

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Appearance :

MRS SWATI SOPARKAR for Petitioner No(s).: 1.
MR JITENDRA MALKAN for Respondent No(s).: 1.

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CORAM :HON'BLE MR.JUSTICE K.A.PUJ

Date : 07/07/2005

COMMON ORAL JUDGMENT

1. These are the petitions filed by two petitioner Companies for sanction of a Scheme of arrangement in the nature of amalgamation of Paushak Limited, the Transferor Company with Darshak Limited, the Transferee Company under Section 391 read with Section 394 of the Companies Act, 1956.
2. Both the petitioner Companies belong to the same group of management. Both of them are listed public limited companies. Paushak, the Transferor Company is engaged in the manufacturing of Chemicals and Pesticides. Darshak, the Transferee Company was originally engaged in manufacturing of bulk drugs. The arrangement is proposed with a view to achieve synergic advantages. The petitions give details of the advantages that would flow by virtue of the arrangement between these Companies.
3. The proposed Scheme was approved unanimously by

the Equity Shareholders and Unsecured Creditors of the Transferor Company at the duly convened meetings. The same was approved unanimously by the preference shareholders and Secured Creditors of the Transferor Company through the consent letters which were put on record along with the application. The Equity Shareholders of the Transferee Company also approved the scheme unanimously at the duly convened meeting. Hence, the meetings of the Preference Shareholders and Secured Creditors were not required to be held and accordingly they were dispensed with vide the order passed on 31.01.2005 annexed to the petition as Annexure D.

4. After the petitions were admitted, the same were duly advertised in the Newspapers viz. Indian Express, Vadodara edition and Loksatta-Jansatta, Vadodara edition dated 25th March, 2005 and the publication in the Government gazette was dispensed with as directed in the order dated 18th

March, 2005. No one has come forward with any objections to the said petitions even after the publication.

5. Notice of the petition of the Petitioner Transferor Company was served upon the Official Liquidator attached to this Court. Vide the report dated 05.07.2005, filed by the Official Liquidator, it is observed that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of their members or to the public interest.
6. Notice of the petition has been served upon the Central Govt. through Regional Director. Shri J.M. Malkan, learned Assistant Solicitor General appears for the Central Government. He has informed the Court and put on record the letter from the Registrar of Companies of Gujarat dated 30.06.2005 along with the letter of the Regional Director dated 24.06.2005 indicating therein

certain observations.

7. The issue at Serial No. 1 raised by the Regional Director pertains to Clause 10 of the Scheme which proposes to amend the object clause of the Memorandum of Association of the Transferee Company, as specified in the Schedule-I annexed with the Scheme, after the Scheme is sanctioned by this Court. The contention of the Regional Director is that the procedure prescribed under various provisions of the Companies Act, viz. Sec. 17,18,31,80 and 192 should be separately followed by the Company. It is submitted by Mrs. Swati Soparkar, learned advocate appearing for the petitioner Companies that the principle of Single Window Clearance is now extensively accepted by various High Courts including this Court. Under this principle, it has been held that when the Scheme envisages various incidental proposals as an integral part of the Scheme, the procedures prescribed under the Companies Act, need not be

separately undertaken. In the present case, since the object Clause is proposed to be amended as a part of the Scheme, the separate procedure is not required to be followed. The certified copy of the order of this Court, sanctioning the Scheme is, as a matter of course, filed with the Registrar of Companies which confirms sanction of all the clauses of the sanctioned Scheme. This is to be treated as an intimation to the Registrar of Companies and it has to take note of all the changes proposed and sanctioned under the Scheme.

8. The second issue raised by the Regional Director in his report pertains to the requisite certificate for commencement of business from RBI. Mrs. Swati Soparkar has clarified that though Clause 11 of the Memorandum of Association of the company permits the Company to undertake the finance business, the Company as a matter of fact is not engaged in the finance activities. The details of the commercial activities of the

Transferee Company are given in detail vide para 7.1 of the petition itself. There is no question of obtaining the permission from RBI at this stage. The Company shall obtain the same, if at all, it decides to undertake the finance activities at a future date.

9. The third issue raised by the Regional Director in his report refers to Clause 9 (c) and 9 (c-1) which refers to the cancellation of the Equity and Preference shares which are held inter-se between the petitioner Companies. Mrs. Soparkar has submitted that the issue is raised due to misconception of the said clause. Provisions of Section 100-104 shall be applicable only if there is actual reduction of capital. The issue of shares by the Transferee Company to the shareholders of the Transferor Company, as provided in Clause 9 (a) of the Scheme, shall give the ultimate picture of capital structure as under:-

i.Cancellation of shares of the Transferor Company
being held by the Transferee Company :

Number of shares : 26,215

Value of Shares : Rs. 2,62,150/-

ii.Cancellation of shares of the Transferee Company
being held by the Transferor Company :

Number of Shares : 800

Value of Shares : Rs. 8,000/-

iii.Shares to be issued by the Transferee Company
to the shareholders of the Transferor Company
after considering the above referred
cancellations :

Number of shares : 2,78,741

Value of Shares : Rs. 27,87,410/-

iv.The Issued and Subscribed Capital of the
Transferee Company as at 31st March 2004 (as
indicated in Para 4 of the petition)

Number of Shares : 29,29,170

Value of Shares : Rs.2,92,91,700/-

v.The Issued and Subscribed Capital of the Transferee Company post amalgamation :

Number of Shares : 32,07,111

Value of Shares : Rs.3,20,71,110/-

10. On the basis of these figures, Mrs. Swati Soparkar has submitted that the ultimate result is the increase in the Issued and Subscribed Capital and there is no resultant reduction of capital in the Post Amalgamation Scenario. Since there is no ultimate reduction of capital, it is not necessary to follow the procedure prescribed for Reduction of Capital under Sec. 100-104 of the Companies Act, 1956.

11. She has further submitted that the statement made by the Regional Director about the dispensation of the meetings of the Equity Shareholders of both

the petitioner Companies is erroneous. She has invited the attention of the Court to the order passed by this Court on 31.01.2005 whereby the meetings of Equity shareholders of both the petitioner companies were directed to be convened and the same were accordingly convened. The result of the said meetings was also submitted through the Chairman's report dated 10.03.2005 and was also reproduced in the petition vide para No. 14. The meeting of the Preference Shareholders of the Transferor Company was dispensed with in light of the consent letters put on record. There being no Preference Shareholders of the Transferee Company, the issue of their approval is irrelevant. No Extra Ordinary General Meeting was called for the Special Resolution under Sec. 100 as, the same was not necessary in view of the fact that there was no reduction in capital of the Transferee Company.

12. The 4th issue raised by the Regional Director in

his report is to the effect that no specific order was obtained from the Court regarding dispensation of Creditors meeting in respect of Transferee Company, unlike dispensation order obtained by the Transferor Company. Mrs. Swati Soparkar has submitted that the Transferee Company is going to continue its operations. No compromise is proposed to the Creditors of the Transferee Company and their rights are not in any way affected by the present Scheme. In light of the same, it is not necessary to obtain the approval of the Creditors of the Transferee Company.

13. In view of the aforesaid explanations given on various observations made by the Regional Director, Mrs. Swati Soparkar has submitted that the Scheme deserves to be sanctioned and the prayers made in the petitions be granted.
14. After having heard Mrs. Swati Soparkar, learned advocate appearing for the petitioner Companies

and Mr. J.M. Malkan, learned Assistant Solicitor General as well as the Official Liquidator and after having considered the report of the Official Liquidator as well as the report of the Regional Director and the explanations offered by the Company in respect of the observations made in the said report, the Court is satisfied that the observations made by the Registrar of Companies do not survive and the Scheme of arrangement would be in the interest of the Companies and their members and Creditors. Prayers in terms of paragraph 20 (A) in case of Company Petition No. 50 of 2005 and para 19 (A) in case of Company Petition No. 51 of 2005 are hereby granted.

15. The petitions are disposed of accordingly. So far as the costs to be paid to the Assistant Solicitor General is concerned, the same is quantified at Rs.3,500/- per petition. The same may be paid to Shri J.M. Malkan, learned Assistant Solicitor General directly.

[K.A. PUJ, J.]

Savariya